

I. PRELIMINARY STATEMENT

“I’m not just some random girl he had sex with in parking lots.”¹ When Plaintiff Brooke Hundley shared this thought with the wife of her paramour, Steve Phillips, in August 2009, she made her point in a dramatic fashion that her affair with Steve Phillips would not be concealed. In a letter penned to Ms. Phillips and delivered to her front doorstep, Hundley insisted that their summer affair would not end in midnight flings in the local Target parking lot. To that end, Hundley suggested to Ms. Phillips that her husband leave his “loveless marriage” for “someone whom he says makes him feel better.”²

Things did not work out as Hundley had hoped. Steve Phillips, a former general manager of the New York Mets and then current sports analyst for the ESPN network, did not abandon his wife of 20 years for her. Hundley instead ended up in a room with two representatives of her employer, Defendant ESPN Productions, Inc., fielding questions about Steve Phillips’s complaint that she was stalking him. ESPN expected Hundley to be candid and advance its investigation of the complaint. Unfortunately, outside sources and ESPN’s own investigation revealed months later that Hundley’s answers were inaccurate, inconsistent, or incomplete. As a result, she lost her job.

Hundley now claims ESPN defamed her and wrongfully terminated her employment in retaliation for complaining about sexual harassment. Hundley faces a hefty burden on both types of claims. Moreover, the record in this case is not friendly to Hundley. The record demonstrates that each of the alleged defamatory statements was either true or made without knowledge or reckless disregard of its falsity. Further, the record corroborates ESPN’s legitimate, nonretaliatory reasons for terminating Hundley’s employment, which include her failure to be

¹ Affidavit of Raymond W. Bertrand, ¶ 2, Ex. A (copy of Hundley’s letter to Marni Phillips).

² *Id.*

forthright with ESPN and to fully cooperate in its investigation. For these reasons, the Court should grant ESPN's Motion for Summary Judgment.

II. UNDISPUTED MATERIAL FACTS

A. The Hundley-Phillips Affair

ESPN, Inc. is the leader of the sports broadcasting world. It is a multinational, multimedia sports entertainment company. Among its many services, ESPN creates original sports television programming. Defendant ESPN Productions, Inc. (ESPN) is a unit within the production division of ESPN, Inc.

Plaintiff Brooke Hundley (Hundley) started working for ESPN in September 2008 as a temporary production assistant. (Tr. Vol. 1, 19:17-18; 20:15-17).³ As a production assistant, among other things, she helped select, edit, clip, and prepare sports footage. (*Id.*, 31:24-32:17).

Steve Phillips is a former professional baseball player and general manager of the New York Mets. He began work with ESPN as a baseball analyst in 2005 and appeared regularly on television broadcasts. In July 2009, Phillips was married to his wife of 20 years, Marni, with whom he had four sons.

Steve Phillips and Brooke Hundley spoke for the first time while working on the July 2009 Major League Baseball All-Star Game, held in St. Louis, Missouri. (*Id.*, 35:24-37:24; 54:18-55:23). After one of the events, members of the ESPN production team, including Phillips and Hundley, hung out in the bar of the hotel where they were all staying. (*Id.*, 67:21-68:18; 69:17-70:19). After drinking and socializing for a while, Hundley and Phillips went up to his hotel room where they engaged in sexual activity. (*Id.*, 89:10-91:13; 92:14-96:15). Over the course of the following weeks, Hundley and Phillips met twice in a Target parking lot where they engaged in sexual activity in Phillips's car. (*Id.*, 105:11-113:24; 118:20-24; 119:11-18; 127:24-131:18; 134:3-135:4).

³ Testimony from Plaintiff Brooke Hundley's deposition is cited as "Tr. Vol. 1, [page(s):line(s)]" or "Tr. Vol. 2, [page(s):line(s)]" and is attached to the Bertrand Affidavit at ¶ 3, Ex. B.

B. Hundley's Communications to or with Marni Phillips

On or around August 5, 2009, something went wrong between Hundley and Phillips. That day, Hundley posted a “gig” on Craigslist, offering to pay someone \$100 to call a male co-worker or friend who was cheating on his wife. (Tr. Vol. 2, 204:20-207:15). Hundley did not name Steve Phillips or his wife in the advertisement. (*Id.*). She also withheld her name, posting it under the alias of “Kelly Burns.” (*Id.*, 310:9-311:24).

The offer was accepted by a woman named Courtney Arp. (Tr. Vol. 1, 193:10-25; Tr. Vol. 2, 204:20-23). Hundley arranged for the two to meet at a local grocery store later that evening. (*Id.*, 312:9-15). Before their meeting, Hundley provided Ms. Arp with a script or outline of the things that Hundley wanted Arp to communicate to Marni Phillips over the phone. (*Id.*, 312:17-313:3; 314:21-315:9).

They met and called Marni Phillips from the store. (*Id.*, 312:17-21). Ms. Arp also called Marni several other times that night from her cell phone. (Bertrand Aff., ¶ 4, Ex. C). In total, according to the police, Ms. Arp placed five phone calls between 10:19 and 10:24 p.m. (*Id.*).

Hundley evidently wanted to ensure that Ms. Phillips knew of her husband’s affair. On August 16, 2009, she personally phoned Marni Phillips and left her a “detailed and very disturbing voicemail message,” telling Ms. Phillips about the affair. (Tr. Vol. 2, 336:6-16; Bertrand Aff., ¶ 5, Ex. D). Ms. Phillips told police that she was fearful for the safety of her sons after Hundley’s message. (*Id.*).

Hundley did not back down. Three days later, on August 19, Ms. Phillips was returning home in the evening with her 7-year-old son. (*Id.*). As she entered her driveway, she was stunned to see Hundley walking down the driveway of her home. With her boy crying “hysterically,” Ms. Phillips immediately called the police with a frantic phone call about the strange woman on her property. (*Id.*). Hundley rushed back to her car, parked at the top of the driveway, and sped away after running her car into a stone wall. (*Id.*).

Once she finally reached her home, Ms. Phillips found a letter at her door. (*Id.*). In the letter, Brooke Hundley introduced herself to Marni Phillips as the woman her husband had “been

seeing for awhile." (Bertrand Aff., ¶ 2, Ex. A; Tr. Vol. 1, 234:20-235:11; 236:2-4). She proceeded to tell her about details of the affair and their feelings for each other. (Bertrand Aff., ¶ 2, Ex. A). She also included personal details about the Phillips family, such as their sons' recent sports activities. (*Id.*; *see also* Bertrand Aff., ¶ 4, Ex. C (police report describing incident)).

C. Hundley's Communications to or with Ryan Phillips

Still reeling from the devastating nature of Hundley's letter, Ms. Phillips and her husband received another surprise when their 16-year-old son, Ryan, informed them that for weeks he had been instant messaging a female whom he believed to be a fellow Wilton High School student. (Bertrand Aff., ¶ 6, Ex. E). Ryan had been contacted by someone who identified herself as "Emily Curtis," a former classmate, claiming that she had overheard his mom telling someone at a local baseball game that her husband was moving out and that she wanted to help Ryan get through that difficult situation. (*Id.*). Over the following weeks, she asked Ryan for very personal information about his parents' marriage, their home, and his activities. (*Id.*).

On the night of August 19, Emily Curtis sent him messages that recounted the exact details of what had occurred that very evening in his driveway. (*Id.*). She was particularly curious whether Ryan's mother had called the police about the incident that had occurred in the driveway. (*Id.*). When Marni Phillips read those messages replaying the disturbing events that had occurred only minutes earlier, she told police that she knew that this woman could be no one else but Brooke Hundley. (Bertrand Aff., ¶ 5, Ex. D).

Ryan also informed his mother that Brooke Hundley had recently sent him numerous Facebook friend requests. (Bertrand Aff., ¶ 6, Ex. E). He also had been sent a friend request by someone falsely posing as a fellow classmate named Caroline Muirhead, who had sent him a message asking for his home phone number. (*Id.*). Marni Phillips and her sons were terrified by Brooke Hundley and feared for their safety. (*Id.*; *see also* Bertrand Aff., ¶ 5, Ex. D (Marni Phillips statement); ¶ 7, Ex. F (Steve Phillips statement)).

D. The Complaints & Investigations

The next day, Steve Phillips complained to ESPN management about Brooke Hundley stalking him. (Adkins Tr. 47:11-48:21).⁴ He disclosed that he had engaged in sexual activity with Hundley and recounted the events that had occurred the day before at his home. (Adkins 50:6-52:4). In response to the complaint, ESPN promptly launched an investigation. (Hricisko Tr. 30:15-19).⁵

Later that day of August 20, 2009, Douglas Adkins (Vice President of Human Resources) and Donna Hricisko (Director of Employee Relations) met with Hundley to discuss the complaint with her. (Adkins Tr. 47:11-48:3; Hricisko Tr. 32:12-16; Tr. Vol. 2, 178:3-15, 183:6-24). Hundley told them about the night in Steve's hotel room, although she did not mention any kind of assault occurring. (Hricisko Tr. 39:11-40:17; Tr. Vol. 2, 186:19-190:2, 192:11-193:8).

Adkins asked Hundley if she had spoken to Steve Phillips's wife or children. (Hricisko Tr. 40:19-41:20; Tr. Vol. 2, 199:17-23). Hundley responded that she had not. (*Id.*). Hundley also denied being a woman who had reportedly been repeatedly calling Marni Phillips. (Tr. Vol. 2, 199:24-200:6). Hundley spoke to them about the letter she had written to Marni Phillips and the events at the Phillips's home the day prior. (Tr. Vol. 2, 214:8-217:16).

The following day, Hundley wrote a letter to Hricisko with an important change to her story about the night in St. Louis. She wrote that once she entered Steve Phillips's hotel room in St. Louis, he came after her physically, blocked the door, "put his hands inside" her, and forced her onto the bed. (Bertrand Aff., ¶ 10, Ex. I; Hricisko Tr. 53:11-54:3)). With this new complaint, Hricisko proceeded to investigate the charges. (Hricisko Tr. 62:7-19).

E. The Settlement & Retractions

Hricisko and Adkins, however, were never given the opportunity to investigate. Hricisko immediately called Hundley several times to meet, but Hundley did not take or return her calls.

⁴ Testimony from Douglas Adkins's deposition is cited as "Adkins Tr. [page(s):line(s)]" and is attached to the Bertrand Affidavit at ¶ 8, Ex. G.

⁵ Testimony from Donna Hricisko's deposition is cited as "Hricisko Tr. [page(s):line(s)]" and is attached to the Bertrand Affidavit at ¶ 9, Ex. H.

(Hricisko Tr. 62:7-19; Bertrand Aff., ¶ 11, Ex. J; Adkins Aff., ¶ 2, Ex. A). Although a meeting was eventually scheduled for August 26, 2009, Hundley cancelled and informed Hricisko that she would not be “speaking to anyone about the events that ha[d] occurred between” herself and Steve Phillips. (Tr. Vol. 2, 286:23-287:22; 291:24-292:5; Bertrand Aff., ¶ 11, Ex. J). Hricisko still urged Hundley to meet so that they could “thoroughly investigate” the complaint. (Tr. Vol. 2, 287:23-288:3; Bertrand Aff., ¶ 11, Ex. J). In response, Hricisko received a communication from Hundley’s attorney, explaining that his client preferred to work this matter out directly with Steve Phillips and his attorneys. (Bertrand Aff., ¶ 12, Ex. K; Tr. Vol. 2, 288:16- 291:20).

Hundley got her wish. On September 13, 2009, she wrote Hricisko to inform her that she had reached a resolution with Steve Phillips and a letter would be coming from her attorney “rescinding any and all statements” she had made to HR. (Bertrand Aff., ¶ 13, Ex. L; Tr. Vol. 2, 295:9-21). Two days later, Hundley’s attorney wrote a letter to Hricisko:

Please be advised this office represents Brooke Hundley and that I am authorized to formally retract, withdraw and take back any and all claims, statements, letters, memos or complaints whether written or verbal, that she made to ESPN and its representatives that in any way reference, involve or concern Steven Phillips or any alleged acts or omissions by Steven Phillips.

(Bertrand Aff., ¶ 14, Ex. M; Tr. Vol. 2, 295:2-8). With the settlement and retractions by both parties, Adkins informed Hundley on September 16, 2009 that the investigation into their complaints was closed. (Bertrand Aff., ¶ 15, Ex. N; Adkins Tr. 39:7-11; Tr. Vol. 2, 296:1-297:10). Both were instructed to avoid each other, but were free to return to work. (*Id.*).⁶

F. The New York Post and Hundley’s Termination

ESPN had no reason to revisit this matter until October 21, 2009, when *The New York Post* broke the story of the Hundley-Phillips affair with a series of articles. Beginning on October 21, *The Post* ran a series of articles with titles such as “Affair is foul for ESPN Star,”

⁶ Hundley was allowed to return immediately. Phillips was suspended without pay for five days. (Adkins Tr. 72:25-73:4; 74:15-24).

“ESPN’s Phillips admits shame in sex scandal,” “Loony lover Brooke Hundley used Craigslist to ‘hire’ a phone stalker,” “Brooke Hundley’s path from video geek to superfreak,” and “Strumpet’s sick sex-taunt script.” (Adkins Aff., ¶ 3, Ex. B). Importantly, the articles published on *The Post*’s website included links to documents such as Hundley’s letter to Marni Phillips and the statements that Steve Phillips, Marni Phillips, and Ryan Phillips submitted to the Wilton Police Department in response to the incident at the Phillips home. (*See id.*).

When ESPN closed its investigation on September 16, it did not have the benefit of the information contained in the articles and supporting documents. (Adkins Tr. 37:11-41:19). Upon reviewing this information, questions arose as to the consistency between what Hundley had reported on August 20, 2009 and what purportedly occurred according to *The Post*’s investigation and the Wilton Police Department’s files. (Adkins Tr. 42:17-43:2).

One of the police reports, in particular, caused ESPN concern. It found that Ryan Phillips had been contacted via Facebook using an IP address tracked back to ESPN’s offices. (Adkins Tr. 43:4-15). In response, Adkins asked the technology group to investigate whether ESPN’s systems had been used to facilitate any improper conduct with Steve Phillips’s minor son. (*Id.*).

On October 22 and 25, 2009, Dan Robertson sent Adkins and Hricisko a report on his findings. Robertson found that Hundley had engaged in considerable Facebook activity in the recent months, including a number of searches with “Phillips” in the search criteria. (Adkins Aff., ¶ 4, Ex. C, ¶ 5, Ex. D). He also found evidence of a Hotmail account with the display name of “Kelly,” which was relevant given *The Post*’s report that Hundley had used the name “Kelly Burns” to post the Craigslist ad. (*Id.*). He also found “shortcuts” or “remnant links” on Hundley’s computer to create or store documents on her computer, which appeared to be related to Steve Phillips, having titles such as “MarniFinal.doc.lnk,” “Ryan.doc.lnk,” and “Steve.doc.lnk.” He also discovered that Hundley had conducted Internet research on “hacking facebook.” (*Id.*).

In addition, Hricisko personally examined Hundley's computer and discovered an e-mail that appeared to be a script of a conversation with Marni Phillips. (Bertrand Aff., ¶ 17, Ex. P; Hricisko Tr. 76:3-79:2).

After comparing Hundley's original statements to him and Hricisko with the reports from the press and police, Adkins concluded that Hundley had failed to be forthright in her August 20, 2009 meeting. (Adkins Tr. 64:18-65:22). According to Adkins, some of her statements were inconsistent or inaccurate; in other cases, Hundley simply withheld information that she should have disclosed. (Adkins Tr. 32:10-36:18; 64:18-65:21). Adkins discussed these issues with Paul Richardson (Senior Vice President of Human Resources) and Ed Durso (Executive Vice President of Administration), and recommended Hundley's termination. (Adkins Tr. 24:19-25:23, 32:10-36:18; Richardson Depo. 46:2-13).⁷ Richardson, with Durso's concurrence, made the decision to terminate Hundley's employment. (Adkins Tr. 24:19-25:23; Richardson Depo. 47:5-50:12).

On Monday morning, October 26, 2009, Adkins and Hricisko met with Hundley to inform her of her separation. (Adkins Tr. 20:10-24). Hricisko followed up that day with a letter memorializing Hundley's separation from employment "due to misconduct." (Hricisko Aff., ¶ 3, Ex. B).⁸ Hundley responded, on April 21, 2010, by filing a retaliation charge with the Connecticut Commission on Human Rights & Opportunities, and on June 8, 2010, by filing the present lawsuit. (Dkt. #1).

III. LEGAL STANDARD

The standard for granting summary judgment is well established. "Summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment

⁷ Testimony from Paul Richardons's deposition is cited as "Richardson Tr. [page(s):line(s)]" and is attached to the Bertrand Affidavit at ¶ 16, Ex. O.

⁸ ESPN terminated Steve Phillips's contract on the same day of Hundley's termination.

Hundley's discharge and any alleged protected activity. *See Lawrence v. Thomson Learning, Inc.*, No. 1:05-CV-329 (RFT), 2007 WL 1593270, at *34 (N.D.N.Y. June 1, 2007) (granting summary judgment to defendant because of evidence of intervening events).

As soon as Hundley engaged in her protected activity, she cut off any communications with ESPN. She declined to take Hrieisko's phone calls to meet about her complaint, cancelled the meeting that was eventually scheduled between them, instructed ESPN that she would not communicate with them about her allegations, explained that her attorney would deal directly with Steve Phillips to resolve her charges, entered into a settlement with Phillips—and then formally retracted all of her prior claims and statements concerning Steve Phillips. Both Hundley and her attorney confirmed in writing the retraction. (Tr. Vol. 2, 295:2-21; Bertrand Aff., ¶¶ 12-14, Exs. K, L, M). Hundley believed that with her retraction, "ESPN would not need to worry about investigating anything." (Tr. Vol. 2, 295:16-21; 296:13-297: 10). In other words, her complaint was a closed matter.

After ESPN closed the initial investigation on September 16, Hundley and Phillips returned to work. But then, on October 21, 2009, *The New York Post* published its articles on the Hundley-Phillips affair, which raised legitimate questions about the accuracy of Hundley's statements on August 20, 2009. (Adkins Tr. 38:23-41:19). With the new facts arising from *The Post*'s articles and related documents (e.g., the Phillips's witness statements, police reports), ESPN reopened its investigation. (*Id.*). Only after ESPN acquired new information from *The New York Post* did it revisit Hundley's conduct. (*Id.*). And no one recommended Hundley's termination until after ESPN's subsequent investigation yielded evidence of her failure to be forthright during the August 20th meeting. In short, Hundley has simply failed to proffer evidence capable of establishing causation.

Further, to the extent Hundley strains to create an inference of causation from the paltry evidence that she has proffered, it cannot survive. "[A]n inference of causation is defeated (1) if the allegedly retaliatory discharge took place at a temporal remove from the protected activity; or (2) if there was an intervening causal event that occurred between the protected activity and the

allegedly retaliatory discharge.” *Yarde v. Good Samaritan Hosp.*, 360 F. Supp. 2d 552, 562 (S.D.N.Y. 2005). ESPN has established both in this case. Hundley therefore cannot show any causal connection between her complaint and her termination, and summary judgment should be entered as a matter of law for ESPN.

2. **ESPN has proffered a legitimate, nonretaliatory basis for Hundley's termination.**

Once the plaintiff has established a prima facie showing of retaliation, the burden shifts “to the employer to articulate *some* legitimate, nondiscriminatory reason” for the employment action. *McDonnell Douglas*, 411 U.S. at 802 (emphasis added). Thus, at this stage, ESPN need only proffer, *not prove*, the existence of a nonretaliatory reason for its decision to separate Hundley from employment. *Texas Dep't of Cnty. Affairs v. Burdine*, 450 U.S. 248, 254-55 (1981). Even assuming *arguendo* that Hundley is able to meet her burden of establishing a prima facie case, ESPN is still entitled to summary judgment because it has presented multiple legitimate, nonretaliatory reasons for its employment decision.

A foundational fact in this case is that ESPN employed Hundley at will. “In Connecticut, an employer and employee have an at-will employment relationship in the absence of a contract to the contrary.” *Thibodeau v. Design Group One Architects, LLC*, 260 Conn. 691, 697 (2002). In addition, the Employee Handbook, Hundley’s offer letter, and her “Acknowledgement – Employment Relationship,” all confirmed her at-will status. (Adkins Aff., ¶¶ 6-8, Exs. E-G). Both ESPN and Hundley, therefore, shared an understanding that they had “the right to terminate the relationship for any reason, or no reason, at any time without fear of legal liability.” *Thibodeau*, 260 Conn. at 697–98. Nonetheless, ESPN had plenty of reasons to separate Hundley upon learning of her failure to be honest about her relationship with Steve Phillips and to cooperate with ESPN’s investigation.

a. **Hundley was not honest or forthright about her communications with the Phillips family.**

Hundley failed to be frank about the history of her communications with Steve Phillips’s wife and children. On August 20, 2009, Hundley rejected outright the notion that she had

spoken with Marni Phillips or any of the Phillips children. (Tr. Vol. 2, 199:20-23) (Q. But I know that Doug had said that -- he had asked me if I had spoken with his wife and his kids or any member of Steve's family. A. I said, "I had not.").

Subsequent information revealed that Hundley's statement was untrue. ESPN later learned that on August 16, 2009, Hundley left "a detailed and very disturbing voicemail message" on Marni Phillips's cell phone. (Bertrand Aff., ¶ 5, Ex. D). It later learned that she had hired Courtney Arp, who did in fact call Marni Phillips and speak briefly with her. (Adkins Aff., ¶ 3, Ex. B). ESPN also discovered that Hundley had contacted Ryan Phillips via Facebook as herself and as Caroline Muirhead. (Bertrand Aff., ¶ 6, Ex. E). Indeed, she actually sent a message (rather than a mere friend request) to Ryan under the Caroline Muirhead account. (Tr. Vol. 2, 352:23-354:18). Dan Robertson's research also corroborated Hundley's extensive Facebook activity, particularly involving the Phillips family. (Adkins Aff., ¶¶ 4-5, Exs. C, D).

b. Hundley was not honest or forthright about Courtney Arp.

Hundley held back on key information related to Courtney Arp. Hundley admits that Adkins asked her if she was the woman who had been repeatedly calling Marni Phillips. Hundley claims she answered the inquiry correctly because she was not in fact that woman. (Tr. Vol. 2, 199:24-201:13). But Hundley also admits that she did "suspect" that the woman whom Adkins was asking about was Courtney Arp. (*Id.*, 307:14-308:7).

And Hundley knew a lot about Ms. Arp. She is the one who solicited and paid Ms. Arp to call Marni Phillips about her husband's affair. She offered Ms. Arp \$100 to make the calls. (*Id.*, 204:20-207:15). She prepared a script for Ms. Arp to use on the phone with Marni Phillips. (*Id.*, 312:17-313:3; 314:21-315:9). She had Ms. Arp's phone number. (*Id.*, 312:9-13). She met Ms. Arp in person to make the phone call together. (*Id.*, 312:17-21). Hundley was armed with all this knowledge, yet shared none of it with Adkins or Hricisko.

Thanks to *The New York Post*'s articles and police reports, ESPN later learned that Hundley possessed such knowledge at the time of the August 20, 2009 meeting. It also obtained evidence of its own to corroborate the story, such as Hricisko's discovery of the script and

Robertson's finding of a Hotmail account on Hundley's computer with the display name of "Kelly." (Adkins Aff., ¶¶ 4-5, Exs. C, D; Hricisko Tr. 76:3-79:2).

c. Hundley was not honest or forthright about the person who attempted to retrieve her letter from the Phillips residence.

Further, Hundley was not honest or forthright about the incident that occurred on August 19, 2009 at the Phillips residence. According to Hricisko's notes of the August 20, 2009 interview, Hundley told them that she had paid a high school student to drive Hundley's car to the home and get the Marni Phillips letter. (Tr. Vol. 2, 242:16-243:3; Hricisko Aff., ¶¶ 4-5, Exs. C, D). Importantly, this version of her story reflected the account given by Hundley in her handwritten affidavit she submitted to the State of Connecticut in support of her application for a temporary restraining order, which she submitted the day after the incident occurred. (Bertrand Aff., ¶ 18, Ex. Q).

ESPN later learned from *The New York Post* and the Wilton Police Department that this account was inaccurate. In fact, Hundley was the female whom Marni Phillips identified in her driveway on the night of August 19.⁹

d. Hundley used company resources to execute her scheme.

On top of all the apparent inconsistencies or failures to disclose, ESPN collected evidence that Hundley had used its resources to carry out her scheme. The Wilton Police Department tracked the fraudulent Facebook account to an IP address at ESPN's offices. (Adkins Tr. 42:17-43:2). Hricisko found on Hundley's computer a script of a conversation involving Marni Phillips. (Hricisko Tr. 76:3-79:2). Robertson confirmed that Hundley had used the Internet at work and her work computer to engage in activities related to the Phillips matter. (Adkins Aff.,

⁹ Marni Phillips told the police that she knew immediately that the girl in her driveway was the woman with whom her husband had been involved. In addition, by looking at a picture of Brooke Hundley on Facebook, Ms. Phillips was able to positively identify the girl in her driveway as Hundley. (Bertrand Aff., ¶ 4, Ex. C).

¶¶ 4-5, Ex. C, D). Robertson reported to Adkins: “She’s definitely used equipment here as it relates to the Phillips events.” (*Id.*)

c. The totality of the circumstances revealed Hundley’s dishonesty and lack of cooperation.

There is no way to sugarcoat Brooke Hundley’s misconduct. She was not honest with her employer, plain and simple. “The relationship of principal and agent implies trust or confidence by the principal in the agent, and the agent is obligated to exercise the utmost good faith, loyalty and honesty toward his principal or employer.” *Marinos v. Poirot*, 132 Conn. App. 693, 699 (2011) (quoting 3 Am. Jur. 2d, *Agency* § 205 (2002)). In other words, “[a]n agent has a fiduciary duty to act loyally for the principle’s benefit in all matters connected with the agency relationship.” 3 Restatement (Third) Of Agency § 8.01 (2006); *see also Town & Country House & Home Serv., Inc. v. Evans*, 150 Conn. 314, 317 (1963) (“the agent or employee is obligated to exercise the utmost good faith, loyalty and honesty toward his principal or employer”).

Hundley attempts to escape the dishonesty label by arguing that she did not provide certain information because Adkins did not ask her the right question. For example, even though Adkins asked if she was the woman calling Ms. Phillips, Hundley provided only the literal answer to that question (i.e., she was not that woman) and volunteered nothing else, despite the cache of knowledge she had on the subject and her employer’s obvious interest for such information. (Tr. Vol. 2, 306:17-307:13) (Q. Was there information that you failed to inform Mr. Adkins and Ms. Hricisko about related to contacts with Mrs. Phillips? A. . . . They asked me a direct question, and I answered the direct question.).

Hundley’s position reflects her twisted view of what constitutes the truth. It is well established that “[t]he intentional withholding of information for the purpose of inducing action has been regarded . . . as equivalent to a fraudulent misrepresentation.” *Pacelli Bros. Transp., Inc. v. Pacelli*, 189 Conn. 401, 407 (1983). Fraudulent nondisclosure “involves the failure to make a full and fair disclosure of known facts connected with a matter about which a party has assumed to speak, under circumstances in which there is a duty to speak.” *Gelinas v. Gelinas*, 10

Conn. App. 167, 173 (1987), *abrogated on other grounds by Billington v. Billington*, 220 Conn. 212 (1991); *see also Statewide Grievance Committee Comm. v. Axelrod*, No. 00044406S, 2001 WL 1571407, at *1 (Conn. Super. Nov. 26, 2001) (finding that a terminated lawyer had exhibited dishonesty by withholding information from his former employers related to a client bill).

Moreover, Hundley has testified that she understood her obligations. Testifying about the meeting with Hricisko and Adkins, Hundley explained that she understood that she had an obligation to respond to their questions and answer their inquiries as best she could. (Tr. Vol. 2, 185:10-186:6). She also testified that she understood that she had an obligation not to withhold information from them. (*Id.*, 186:4-6) (Q. Did you understand you had an obligation not to withhold information from them? A. I believe, yeah.).

Hundley cannot dispute that she failed to fully and fairly disclose all the facts she knew about her communications or contacts with Steve Phillips's family and Courtney Arp. She cannot dispute that she failed to fully and fairly disclose all the facts she knew about the August 19th events at the Phillips home. She had an obligation to speak but she misrepresented, misled, or withheld.

In any case, she was dishonest. "Dishonesty is a legitimate, nondiscriminatory reason for terminating an employee, especially when it is stated in the company's policy," as is the case here.¹⁰ *Sandman v. Mediamark Research, Inc.*, No. 00 CIV. 6529(JSM), 2002 WL 424660, at *7 (S.D.N.Y. Mar. 18, 2002) (internal citation omitted). There is no genuine issue of material that ESPN has offered a legitimate, nonretaliatory reason for Hundley's termination, and therefore, summary judgment should be granted to ESPN on this claim. *See Roge v. NYP Holdings, Inc.*, 257 F.3d 164, 169 (2d Cir. 2001) ("Whether or not fraud actually occurred, *questionable circumstances* surrounding an employee's claim for benefits provide a nondiscriminatory reason for choosing to terminate that employee." (emphasis added)).

¹⁰ The ESPN Employee Handbook states that "[c]ngaging in acts of dishonesty" is a behavior that can constitute "misconduct which can result in disciplinary action up to and including termination." (Adkins Aff., ¶ 6, Ex. E).

3. **Hundley cannot establish that ESPN's legitimate, nonretaliatory reason is pretextual.**

ESPN's production of a legitimate, nonretaliatory reason for the discharge shifts the burden back to Hundley. She must now "come forward with evidence that the defendant's proffered, non-discriminatory reason is a mere pretext for actual discrimination." *Weinstock v. Columbia Univ.*, 224 F.3d 33, 42 (2d Cir. 2000). Hundley "must produce not simply some evidence, but sufficient evidence to support a rational finding that the legitimate, non-discriminatory reasons proffered by [ESPN] were false, and that more likely than not [retaliation] was the real reason for the [employment action]." *Id.* (internal quotation marks omitted) (last alteration in original).

Here, Hundley offers no evidence to cast doubt on ESPN's stated reasons for terminating her employment. Hundley cannot dispute that she made certain representations to ESPN during the initial investigation that were inconsistent with information revealed by the subsequent *New York Post* articles and police reports. She cannot challenge the authenticity of the evidence discovered by Dan Robertson and Donna Hricisko regarding her use of company resources. Neither can she dispute that the emerging information indicated that Hundley had failed to disclose to ESPN important details relevant to the investigation. When there is no evidence in the record that would permit a jury to disbelieve the employer's explanation for its action, summary judgment for the employer is appropriate. See *Weinstock*, 224 F.3d at 42. On this record, a reasonable juror would be bound to accept ESPN's explanation as true. There is no evidentiary foundation for a reasonable juror to find that ESPN's proffered reasons for Hundley's termination were false and a façade to cover up its retaliation for her complaint about Steve Phillips. As a result, summary judgment for ESPN is appropriate.

B. **Hundley Cannot Satisfy Her Burden on Summary Judgment on Her Defamation Claims Because She Cannot Demonstrate that the Alleged Defamatory Statements Were False or Made with Actual Malice (Counts 1-8).**

The remaining eight claims in this case are for defamation. "A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the